

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

MISC. PETITION NO.1 OF 1996
IN
PETITION NO.250 OF 1984

Nipun B. Maniar Petitioner

V/s.

Kirit C. Maniar & Ors. Respondents

Mr.Kirit Mody i/b M/s.Haridas & Co. for the
Petitioner.

Mr.H.K. Vazirani for Respondent No.1.

Mr.Mukesh D. Parekh - Respondent No.5 is present in
person.

CORAM : S.J. VAZIFDAR, J.
DATED : 27TH AUGUST, 2007.

P.C. :

1. The Petition is filed for an order setting aside the order dated 19.12.1990 passed in terms of the consent terms filed in the Testamentary Petition No.715 of 1982 and for a declaration that Respondent No.1 had no authority or power to obtain the said order and the same is not binding on the Petitioner. The Petitioner has also sought an order removing Respondent No.1 as an executor of the last Will and Testament dated 1.11.1982 of the deceased and for an

order appointing him or any other fit person as an administrator to administer the estate of the deceased as per the said Will. Lastly, the Petitioner has sought an order directing Respondent no.1 to render a true and faithful account of the administration of the estate of the deceased and to hand over to the Petitioner or any other person as an administrator the charge of the said estate.

2. I am not inclined to grant an order setting aside the order dated 19.12.1990. This relief is sought on the basis that when the order dated 19.12.1990 was passed, the caveator in Petition No.715 of 1982 i.e. the Petitioner's father had already expired on 26.4.1990. The Respondent's case is that the consent terms had already been arrived at and signed prior to the death of the caveator and all that was done on 19.12.1990 was that the said consent terms had been filed and order in terms thereof was passed.

3. It is pertinent to note that in an affidavit dated 15.2.1991 in Notice of Motion No.15 of 1996 in Petition No.1 of 1996, the Petitioner had referred to some of the relevant proceedings and stated as under:-

I hereby confirm consent terms filed by the

Petitioners abovenamed. Hereto annexed and marked Ex. 'A' is a Xerox copy of the said consent terms."

4. They are the very consent terms that the Petitioner now seeks to have revoked. This Petition was filed on 21.12.1995 i.e. almost five years after the said affidavit.

5. Further there is no dispute about the existence and validity of the said Will dated 1.11.1982.

6. The relief for recalling/setting aside the order dated 19.12.1990 is therefore rejected.

7. I must however, clarify that I have not considered various allegations made by the Petitioner against Respondent No.1, who is at present functioning as an executor of the said Will. Nor have I considered the allegations regarding under-valuation of the flat sold to Respondent No.5. Respondent No.5 is stranger to the family. No final relief has even been sought against Respondent No.5. Only interim reliefs pending this Petition have been sought to restrain him from selling the said flat. In the

circumstances, no reliefs against Respondent No.5 are called for.

8. It is however, clarified that in the event the Petitioner establishing in the Administration Suit No.1361 of 1990 that there have been any irregularities including under-valuation in respect of the sale of the said flat, in respect of the estate the loss caused thereby shall be made good inter-alia from the share of the estate of the deceased coming to Respondent No.1.

9. Further Respondent No.1 on or before 30.11.2007 shall furnish a detailed account of the manner in which he has dealt with the estate of the deceased. He shall further state the particulars of the assets of the estate he had dealt with and which he may continue to have possession or control over howsoever. The accounts shall be filed in Court and a copy thereof shall be furnished to the advocate of the Petitioner in this Petition.

10. It is also clarified that this order does not affect the rights of Respondent No.1 to take any action in respect of the estate of the deceased including as against the Petitioner.

11. Further Respondent No.1 agrees not to dispose of, alienate, encumber, part with possession of or create any third party right, title and/or interest in respect of the estate of the deceased without giving the Petitioner's advocate notice of his intention of doing so at least four weeks in advance.

12. The Petition is accordingly disposed of.